TOWN OF NEW WINDSOR

ZONING BOARD OF APPEALS Regular Session

Date: JULY 23, 2007

AGENDA

7:30 p.m. - Roll Call

Motion to accept minutes of **JUNE 25**TH, 2007 meetings as written.

PRELIMINARY MEETINGS:

- 1. **ALBERT & MARY BERLINGIERI (07-35)** Request for 25 ft. Side Yard Setback and; 27 ft. Total Side Yard Setback for existing deck at 432 Bull Road in an R-1 Zone (52-1-13.5)
- 2. MICHAEL PISACRETA (07-36) Request for variance of:

EXISTING SHED: 5 ft. Side Yard Setback (300-11-A-1-B)

1 ft. 6 in. Rear Yard Setback (300-11-A-1-B)

EXISTING DECK: 30 ft. Rear Yard Setback (G-6)

All at 44 Keats Drive in an R-4 Zone (75-1-21)

- 3. **MATTHEW ZALOGA (for Mazza)** Request for variance to permit 8 ft. fence for proposed tennis court at 1016 Forest Glen in an R-3 Zone (89-6-10)
- 4. **PETER MC LOUGHLIN (07-38)** Request for Interpretation and/or Use variance for Existing Single Family Dwelling with proposed addition and three kitchens at 502 Union Avenue in an R-4 Zone (7-1-29)

PUBLIC HEARINGS:

5. VITO A. RIZZI (07-26) Request for interpretation and/or use variance to extend commercial use into R-4 Zone at 287 Windsor Highway in a C/R-4 Zone (35-1-52)

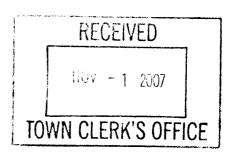
CONTINUATION OF PUBLIC HEARING - TABLED FROM JUNE 25TH, 2007 MEETING:

6. THOMAS RETCHO & TERRANCE RETCHO (07-07) Request for :

2 ft. Building Height for Proposed 8 ft. fence. Interpretation and/or Use Variance for the storage, parking and use of trailers (57-1-113.1) Interpretation and/or Use Variance for the storage, parking and use of trailers (57-1-113.2)

All at 42 & 40 Lakeside Drive in an R-4 Zone.

July 23, 2007



TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS
July 23rd, 2007

MEMBERS PRESENT: MICHAEL KANE, CHAIRMAN KIMBERLY GANN

KIMBERLY GANN KATHLEEN LOCEY ERIC

LUNDSTROM

ALSO PRESENT:

ANDREW KRIEGER, ESQ. ZONING BOARD ATTORNEY

MYRA MASON

ZONING BOARD SECRETARY

MICHAEL BABCOCK BUILDING INSPECTOR

REGULAR MEETING

MR. KANE: I would like to call to order the July 23rd, 2007 meeting of the New Windsor Zoning Board of Appeals.

APPROVAL OF MINUTES DATED JUNE 25th, 2007

MR. KANE: Motion to accept the minutes of June 25th, 2007 as written.

MS. GANN: So moved.

MR. LUNDSTROM: I second the motion.

ROLL CALL

MS.	GANN	AYE
MR.	LUNDSTROM	AYE
MS.	LOCEY	AYE
MR.	KANE	AYE

PRELIMINARY MEETINGS

ALBERT & MARY BERLINGIERI (07-35)

MR. KANE: First meeting request is for a 25 ft. side yard setback and a 27 ft. total side yard setback for existing deck at 432 Bull Road in an R-1 Zone. Just tell us what you want to do.

Mr. and Mrs. Berlingieri appeared before the board for this proposal.

MR. KANE: Let me explain that in the Town of New Windsor we hold two meetings. A preliminary meeting so we can get a general idea of what you want to do and to make sure that you have enough information to present to us so that we can make a decision. Other towns you go in, boom, you're walking in cold. So we'll start. Go ahead.

MRS. BERLINGIERI: We're in the process of selling the house and we went to get the permit and when we got the permit we found out that the permit we had was not good for the existing deck that we have had since 1990 when my son graduated because when we got the contractor to build the deck we said, do we need another permit and he said, do you have an existing permit and we said, yes. He said, well, you don't need it. We have only been here three years and here we stand with this deck. And there is an error, it's only fifteen ft. It must be a typo.

MR. BERLINGIERI: 15 ft. setback. And, in fact, if you take a look at the pictures I provided I think I drew a 15 ft. line because I crawled underneath.

MS. LOCEY: You have 15 ft., is that correct?

MR. BERLINGIERI: Excuse me?

MS. LOCEY: You have 15 ft. from the edge of the deck until the --

MR. LUNDSTROM: But the requirement is for 40 ft. so you need the difference.

MR. BERLINGIERI: I understand now.

MR. KANE: The 25 is the difference that you need. We want you to be sure. Okay. Couple of questions. Cutting down of any trees or substantial vegetation in the building of the deck?

MR. BERLINGIERI: Not at all.

MR. KANE: Any water hazards or run off in the building of the deck?

MR. BERLINGIERI: Not at all.

MR. KANE: Have there been -- you said the deck has been in existence since 1990, approximately?

MR. BERLINGIERI: Yes.

MRS. BERLINGIERI: Yes.

MR. KANE: Has there been any complaints formally. or informally about the deck?

MR. BERLINGIERI: No, everybody enjoys the deck.

MR. KANE: And the deck is similar in size and nature to other decks in your neighborhood.

MRS. BERLINGIERI: Yes.

MR. BERLINGIERI: Yes.

MR. KANE: Does the deck go over any easments on your property?

MR. BERLINGIERI: No.

MR. KANE: On this particular deck is there a door coming from your building to the deck?

MR. BERLINGIERI: From the kitchen to the deck, yes.

MR. KANE: Without the deck there you would consider it a safety hazard?

MR. KRIEGER: Somebody exiting the house.

MR. KANE: If the deck was not there.

MR. BERLINGIERI: Yes, definately. MRS.

BERLINGIERI: Sorry, definitely. MR.

KANE: Okay.

MR. KANE: Does the board have any further questions?

MR. LUNDSTROM: One question. You said the deck was erected what year?

MS. BERLINGIERI: 1990. I remember I was pushing the contractor because my son was graduating and I wanted him to hurry up to have it done.

MR. LUNDSTROM: When was the house built?

MR. BERLINGIERI: 1981. There was an existing deck that when we bought the home we insisted on a C of O of the deck. The attorney that was handling the selling of the house acquired a C of O for the deck that was there and we had company and somebody broke the rail on the deck sitting on it so my son, my oldest son and I went to repair the deck and as we were -- as we jimmied the railing the deck actually fell on us. Well,

it didn't fall on us, but fell over so we decided to build a new deck. Unbeknownst to us building a bigger deck we did not realize --

MRS. BERLINGIERI: We were in violation.

MR. KANE: As in most towns it used to be if you were going to, and correct me if I wrong, build the same size or smaller they didn't used to be, they didn't care. Now any changes you make most towns require you to go get a permit.

MR. BERLINGIERI: I am finding that out now as we are trying to sell.

MR. BABCOCK: You have to update to new codes, railing, height separation and stair heights.

MR. KANE: Any further questions?

MR. LUNDSTROM: What was the size of the original deck?

MR. BABCOCK: Looks like 14 by 14 according to the paperwork here.

MR. BERLINGIERI: About that.

MR. KANE: No further questions? I will accept a motion.

MS. LOCEY: Call for a motion to schedule a public hearing on the application of Albert and Mary Berlingieri for the requested variance as detailed on the agenda of the New Windsor Zoning Board of Appeals regular session dated July 23rd, 2007.

MS. GANN: I will second the motion.

ROLL CALL

July 23, 2007

GANN	AYE
LUNDSTROM	AYE
LOCEY	AYE
KANE	AYE
	LUNDSTROM LOCEY

MR. KANE: This tells you what you need to do next. Any questions you can give Myra a call.

MICHAEL PISACRETA (07-36)

MR. KANE: Next preliminary meeting is Michael Pisacreta. A request for variance of existing shed, 5 ft. side yard setback and a 1 ft. 6 in. rear yard setback. Existing deck 30 ft. rear yard setback all at 44 Keats Drive in an R-4 Zone. Good evening.

Mr. Michael Pisacreta appeared before the board for this proposal.

MR. PISACRETA: Good evening.

MR. KANE: What you want to do is state your name and address for that young lady over there to hear.

MR. PISACRETA: Michael Pisacreta, 44 Keats Drive in New Windsor. I put my house up for sale and one of my coworkers at work -- I told him I was selling my house and he informed me I have a shed and I have a little deck and he said well, did you ever get permits. I said that I was informed I did not have to. One from the contractor who built the little deck because he told me because the deck is not attached to the house you don't need a permit. No, it's not attached. It's next to the house. He told me I did not need a permit to build that deck. And then as far as the shed, I bought that shed from Mr. Shed over there on 94 and when I bought that shed they told me so many feet from my neighbor's fences I didn't need a permit for that either and I believed these people. Now when I talk to my coworker they said you better go to the town and you better find out if you do need a permit and that is why I am here.

MR. KANE: You need a permit for everything.

MR. PISACRETA: Yes.

MR. KANE: Yes.

MR. KANE: How long has the deck been in existence?

MR. PISACRETA: Been there for four years.

MR. KANE: Four years. Any complaints formally or informally?

MR. PISACRETA: No. One of my neighbors liked the paint job I did on it and wanted the same color I had.

MR. KANE: Create any water hazards or run off?

MR. PISACRETA: No, sir no.

MR. KANE: Cut down any trees, substantial vegegation in the building of the deck?

MR. PISACRETA: No.

MR. KANE: Is the deck similar in size and nature to other decks in your neighborhood?

MR. PISACRETA: It's a lot smaller.

MR. KANE: Okay.

MR. PISACRETA: Just one little flat little --

MR. KANE: And let me just check one thing here. Any easements running through where the deck is?

MR. PISACRETA: No.

MR. KANE: That is about it on the deck for me. Any further questions on the deck from the Board? The shed itself, again, cut down any trees, substantial vegetation in the building of the shed?

MR. PISACRETA: No.

MR. KANE: About how long has the shed been there?

MR. PISACRETA: That shed has been there for six years.

MR. KANE: Any complaints about the shed?

MR. PISACRETA: No complaints at all.

MR. KANE: Shed is similar in size and nature to other sheds in your neighborhood?

MR. PISACRETA: Yes.

MR. KANE: Okay. Any easements running through where the shed is?

MR. PISACRETA: No.

MR. KANE: And Mike, we have 1 ft. 6 in. on the rear yard setback. Is that getting a little tight?

MR. BABCOCK: I think so, yes.

MR. KANE: Is it easier to round it off to 2 feet?

MR. BABCOCK: I didn't do it. They brought it in and measured.

MR. KANE: Because whatever it is and if a bank goes there later on and you are 1 ft. 7 in. you are in trouble.

MR. PISACRETA: I see.

MR. KANE: You will be back here. I want to make sure of, you know, when we get that that is

pretty tight. I want to make sure you have the right thing.

MR. BABCOCK: I am not quite sure where we got those numbers from. I am sure we got --

MR. KANE: Can we double check and see if you are requesting enough of a variance for that to make sure we have no mistakes later on?

MR. KRIEGER: You have to advertise that. You put that in the avertisement.

MR. BABCOCK: Is there a survey that shows these numbers?

MR. PISACRETA: I don't think so.

MR. KANE: Do you know where we got the numbers from?

MR. PISACRETA: When I came here and I filled out the forms, that was it. I was told, you know, somebody would come and measure everything.

MR. KANE: We need to double check.

MR. BABCOCK: We don't measure it.

MR. KANE: Please give Mike or Myra a call. It has to go to you first Mike?

MR. BABCOCK: Yes, either one. Just change the numbers.

MR. KANE: And we need to get that in correctly. It has to be correct for the newspaper.

MR. PISACRETA: I can measure it myself.

MR. KRIEGER: That would be the wisest thing to do and then you would know since you are the one that is going to be penalized and in trouble. Before you listen to other people do it

yourself.

MR. PISACRETA: Your right, yup.

MR. KANE: Let's make sure of those numbers. Please give Myra a call as soon as possible.

MR. PISACRETA: Call her up and tell her?

MR. KANE: We need to make sure those things are correct for what goes into the newspaper, which is ten days before your hearing.

MR. PISACRETA: Okay. So that is for my neighbor's fences?

MR. KANE: Right, from your property line to the rear of the shed.

MR. PISACRETA: Now, my neighbor's property, she has a fence which is on my property that has come onto mine and, you know, I never said anything all of these years, but her fence is on my side of the property line quite a few inches.

MR. KRIEGER: Does she recognize the measurements to the property line?

MR. PISACRETA: The fence is over the property line.

MR. KRIEGER: The fence is irrelevant, but with respect to the fence you should -- if you don't want her to move it you should have the agreement that her fence is on your property.

MR. PISACRETA: Right because I have a survey that shows, you know --

MR. KANE: Follow-up on it.

MR. PISACRETA: I have that.

MR. BABCOCK: On that survey it should show the --

MR. PISACRETA: No, it wasn't there. It was when I first bought the house. This shed and deck was built.

MR. KANE: You want to make sure of those numbers. If those numbers are wrong and if we pass the variances you will be back.

MR. PISACRETA: Okay. I will call first thing.

MR. KANE: Any further questions?

MR. LUNDSTROM: Your application for the variance for the deck --

MR. PISACRETA: Right.

MR. LUNDSTROM: -- this photograph, it does not look like it's to scale. It looks like the deck is two, three times larger than the house.

MR. PISACRETA: No, it's not.

MR. LUNDSTROM: I did not think so. What you may want to do for preparation of the public hearing is re-draw that to scale. There it looks like here the house is impeded on the roofs. I don't think that is the case either.

MR. PISACRETA: No, that is in the backyard.

MR. LUNDSTROM: You may want to redo that.

MR. BABCOCK: Yes.

MR. LUNDSTROM: Just put it on a regular piece of paper.

MR. BABCOCK: This is based on your neighbor's? You wrote this 8 1/2 here, 5 feet here?

MR. PISACRETA: Right. Okay. That's correct. That is what I measured. Yes, that's correct. The numbers are right.

MR. KANE: So you want to go with the 1 ft., 6 in.?

MR. PISACRETA: That's right.

MR. KANE: Settled. Any further questions from the Board? I will accept a motion.

MR. LUNDSTROM: I will offer a motion for the application of Mr. Michael Pisacreta for a variance as documented on the agenda of the Zoning Board of Appeals, Town of New Windsor, dated July 23rd, 2007 be allowed to proceed to a public hearing.

MS. GANN: Second the motion.

ROLL CALL

MS. GANN AYE
MR. LUNDSTROM AYE
MS. LOCEY AYE
MR. KANE AYE

MATTHEW ZALOGA (for Mazza) (07-37)

MR. KANE: Preliminary meeting, Matthew Zaloga, request for variance to permit 8 ft. fence for proposed tennis at 1016 Forest Glen in an R-3 zone. Good evening.

Mr. Matthew Zaloga appeared before the board for this proposal.

MR. ZALOGA: Good evening.

MR. KANE: State your name and your address.

MR. ZALOGA: Matthew Zaloga, 522 Union Avenue, New Windsor, New York. I am the contractor at 1016 Forest Glen in New Windsor for Gus Mazza and as of today I am here pleading my case for my fence.

MR. KANE: Can you show me on these pictures where you want to put it?

MR. ZALOGA: Yes, I can.

MR. KANE: Thank you.

MR. ZALOGA: (Indicating.)

MR. KANE: I am figuring maybe these orange stakes?

MR. ZALOGA: Okay. Let's see, the 8 ft. fence right here actually behind those stakes on the property line right up against the trees.

MR. KANE: Right up against the trees. How far out to the road?

MR. ZALOGA: I would like to go up to 10 feet or 11 feet. I mean, roughly between 10 and 11 off of the road.

MR. LUNDSTROM: Is it a corner lot?

MR. KANE: Will the fence impede the vision of any traffic coming down the road?

MR. ZALOGA: I do not believe so. It's a cyclone fence.

MS. GANN: Can you define what a cyclone fence is?

MR. ZALOGA: Chain link. In other words, see through. It's just a linked fence.

MS. GANN: Okay.

MR. ZALOGA: Actually, from a distance you cannot even see it. You have to really look to see it.

MR. KANE: How far towards the -- towards the driveway? So you are starting the fence here, coming let's say 11 feet back there, how far towards the back of the house?

MR. ZALOGA: Realistically speaking I don't have them with me. I just took them this morning, but I have stonewalls -- this is all leveled off now so what I am looking for is climbing up where this is all leveled in the back here, but it cuts down into the front so I am looking at -- from 60 feet plus the 70 feet in the back of the tennis court area, everything up by the house can stay at 4 feet.

MR. KANE: The reason for the 8 ft. instead of 4 feet?

MR. ZALOGA: It's a tennis court.

MS. GANN: Sorry --

MR. KANE: For the public hearing could you bring in current pictures --

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MR. ZALOGA: Yes, I can.

MR. KANE: -- of the site?

MR. ZALOGA: I will have plenty of them.

MS. GANN: My question was going to be are you taking down the trees here in the pictures?

MR. ZALOGA: No.

MS. GANN: Okay. How about these over here (indicating)?

MR. ZALOGA: No.

MR. LUNDSTROM: Mr. Chairman --

MR. KANE: They have done some excavating work in there so....

MR. LUNDSTROM: -- just a point of curiousity, what street does the house front on?

MR. KANE: It's -- it actually fronts on --

MR. BABCOCK: Right to the --

MR. KANE: Forest Glen and Summit. The front corner of both.

MR. BABCOCK: Eric (indicating.)

MR. LUNDSTROM: Yes.

MR. BABCOCK: What is the address?

MR. KANE: 1016 Forest Glen so apparently we feel it faces Forest Glen more than Summit.

MR. LUNDSTROM: Yes.

MR. BABCOCK: That is why we gave it that address.

MS. LOCEY: So there is going to be a picket fence in front of the house?

MR. ZALOGA: The picket fence is already installed, correct.

MS. LOCEY: And the cyclone fence is going to start at the rear looking at the house. It's the rear left-hand corner?

MR. ZALOGA: Yes.

MS. LOCEY: And it goes out towards the road?

MR. ZALOGA: Yes.

MS. LOCEY: And back?

MR. ZALOGA: Correct.

MR. LUNDSTROM: If I may, what I suggest you do at the public hearing is put that plan up on the easle board for the public to see that is here.

MR. KANE: One quick note, a slight discrepancy, so let's just make sure we have in the paperwork -- in the minutes we have an 8 ft. fence and the variance in the disapproval says a 7.5 ft. fence.

MR. ZALOGA: That was the original.

MR. KANE: It was changed so it will be 8 ft.

MR. ZALOGA: It was changed to 8 ft. after I had talked to Lou.

MR. KANE: We'll correct it then. Thank you.

MR. LUNDSTROM: You said Lou, Lou being the building department?

MR. ZALOGA: Yes.

MR. KANE: No easements where the fence is going to go?

MR. ZALOGA: There is a 20 ft. easement in the back corner that I have to go over that actually runs towards the pine trees that you saw in the picture.

MR. KANE: Yes.

MS. LOCEY: What kind of easement is it?

MR. ZALOGA: It's a sewer easement.

MR. BABCOCK: The homeowners and the town have an agreement. I just talked to Mike about that and that can be part of this file once we just get a copy of it.

MR. KANE: Okay. So you understand that if -- or the homeowner should understand that if the town needs to get through there they can go right through.

MR. ZALOGA: Yup.

MR. BABCOCK: Yup.

MR. KANE: I have no further questions at this point. Anybody else on the baord? I will accept a motion.

MS. GANN: I will offer a motion to schedule a public hearing on the application of Matthew Zaloga (for Mazza) on the request for variance to permit an 8 ft. fence for proposed tennis court at 1016 Forest Glen.

MR. LUNDSTROM: Second that motion.

ROLL CALL

MS.	GANN	AYE
MR.	LUNDSTROM	AYE
MS.	LOCEY	AYE
MR.	KANE	AYE

PETER McLOUGHLIN (07-38)

MR. KANE: Tonight's next preliminary meeting is Peter McLoughlin. Request for interpretation and/or use variance for existing sink family dwelling with proposed addition and three kitchens at 502 Union Avenue in an R-4 zone. Hello.

MR. McLOUGHLIN: How are you?

MR. KANE: Good. Tell us what you want to do, sir.

MR. McLOUGHLIN: Well, it's already done. It was transferred -- the title was transferred to me in 1994 for a second kitchen in the lower level and the title was transferred to me from the other gentlemen without being -- he used to pride himself when he sold me the house that he never let anybody in, so now I am selling the home, so now I have that second kitchen which has come in handy as a guest kitchen. I married an Italian and

MR. KANE: I remember well.

MR. McLOUGHLIN: So anyway, it's become useful, but the third one looks like a third kitchen. It looks excessive, but I recently put an addition on my home and it was for my wife. She has a daycare here on the corner and for code compliance with the county you cannot bring the children across the house to wash their hands. You have to bring all of the children to this sink. I put it in when I did the addition. I put in a sink with a counter, no stove. It's just a --

MR. KANE: Basically a utility sink.

MR. McLOUGHLIN: That's right. So on that level I have my main kitchen and then the same level on my L ranch that I put on I put in a sink to comply with code for my wife to wash the hands of the kids. And hopefully some day it would be my mini bar there and then the kitchen downstairs has become -- my father has stayed there.

MR. KANE: There is no closed doors, no external entrance that might --

MR. McLOUGHLIN: To which one? To downstairs?

MR. KANE: To the downstairs.

MR. McLOUGHLIN: One egress downstairs.

MR. KANE: But you have free open access from inside of the home?

MR. McLOUGHLIN: It had a bilco when I moved in. It has access when we have parties, people walk down the stairs.

MR. KANE: And everything is all on one meter coming in for electricity and gas?

MR. McLOUGHLIN: Absolutely.

MR. KANE: Your intent is that this will be sold as a single family home?

MR. McLOUGHLIN: Absolutely.

MR. KRIEGER: Always will be a one family house.

MR. McLOUGHLIN: Right. I understand that fully.

MR. LUNDSTROM: This question is directed to the Building Inspector. Mike, this daycare sink/counter on the first floor, is that considered a kitchen or is that considered a

utility room? There doesn't appear to be a stove in there.

MR. BABCOCK: Well, I think -- I really didn't work on this project myself, Lou did. I just think Lou is covering all bases. I don't think he would be here if it was just for that. I think it's the idea that there is -- typically looks like there is a kitchen on each floor.

MR. McLOUGHLIN: My wife did ask how that was a kitchen and Lou said it's characterized as one. You just have to go in and explain it and as long as they are okay with it --

MR. BABCOCK: I think it's best we have it on record that he is here tonight. Whether it's called a kitchen or not it's the whole idea it was --

MR. KANE: So there will be no questions later on, whether there is bank that questions it or --

MR. BABCOCK: It's a single family house, always a single family house.

MR. McLOUGHLIN: There is no dedicated 30 amp line for a stove that is in there. There is nothing like that, just a sink.

MR. LUNDSTROM: Would there be any problem putting a caveat if the approval were to come through a public hearing that there would never be a stove put in?

MR. McLOUGHLIN: Absolutely. In the daycare addition, sure, absolutely fine with me.

MR. KANE: Okay. Any further questions?

MR. LUNDSTROM: I will offer a motion that the application by Peter McLoughlin as per the agenda

of the Zoning Board of Appeals, Town of New Windsor regular session dated July 23rd, 2007 be allowed to proceed to a public hearing.

MS. GANN: Second the motion.

MR. KANE: Roll call.

ROLL CALL

MS.	GANN	AYE
MR.	LUNDSTROM	AYE
MS.	LOCEY	AYE
MR.	KANE	AYE



PUBLIC HEARINGS

VITO A. RIZZI (07-26)

MR. KANE: Tonights first public hearing, request for interpretation and/or use variance to extend commercial use into R-4 Zone at 287 Windsor Highway in a C/R-4 Zone.

Daniel Bloom, Esq., Mr. Anthony Coppola and Mr. Eldred P. Carhart appeared before the board for this proposal.

MR. BLOOM: Good evening. Ladies and gentlemen, for the record my name is Dan Bloom and I represent Anthony Rizzi on this application.

MR. KANE: Mr. Bloom, let me just interrupt you for one second and ask if there is anybody in the audience for this particular hearing? Okay. We are going to give you a piece of paper just for your name and address. It's strictly for the stenographer so that she has the information for the record. We are not going to sell it to any web sites or anything like that.

MR. COPPOLA: Thank you. If it pleases the panel I would like to present the matter this evening in a certain order. I would like to have our architect, Mr. Anthony Coppola make a presentation first so there will be a general overview of the type of structure we wish to construct and then I will make a few comments to the board and then I would like to have my expert appraiser, Mr. Carhart, address the board at that time.

MR. KANE: Okay.

MR. ATTORNEYNAME: Thank you, Dan. My name, again, is Anthony Coppola. I prepared the

drawings for the building, but I am also going to explain the site plan first. The site plan was prepared by Greg Shaw. I will go over the site plan first and then the floor plan, then the exterior elevations. Starting with the site plan this is approximately a three acre parcel. It's about 250 feet wide along Windsor Highway and over 500 feet deep. What we are proposing to do is basically an L shaped, one story office retail building of approximately 14,500 square feet. And that is depicted right in the center of the parcel. The -- this footprint of the proposed building straddles the zoning line which 200 -it's set 200 feet back so that zoning line is C Zone in the front and R-4 Zone in the back. Basically the configuration and the reasoning behind this site plan is basically to incorporate all of the required parking in the front of the building, which would be how almost all retail buildings are set up so there are -- as the town would require, one space per every 150 square feet of proposed building so that 97 parking spaces in the front. The entrance is down on the northeastern side of the parcel right down here (indicating) and that is two-way traffic in through here and circulated around the front of the parking area and basically there is a loading area in the rear. So aside from the L shaped building there is existing landscaping and screen on each side and then in the rear of the parcel there is approximately a 200 ft. setback from the corner of the building to the lot line and within that 200 ft. setback that will be basically almost entirely green area. There is going to be a new water quality and storm water retention area there that will basically mitigate any of the water that is collected by the hard surfaces here. The new roof and the new pavement area that will collect in that retention area there is a small area here or I guess an area on the eastern side that is going to be undisturbed wooded and proposing some new white pines in the

rear to add to the screen, but I think one of the most important things here is from the rear property line which borders the residential lots over here it's 200 feet to the -- to the building. that is the site plan in an outline. Showing you what we are doing architecturally. Again, we are calling this an office/retail building, but my feeling is it will probably be primarily a retail building, 14,500 square feet dividing it up into a proposed maximum of seven spaces, maybe fewer than that depending if they are combined. All of these spaces are accessed out of the front. Some will be able to park in the front and we basically developed a covered walkway area all of the way and so you would be able to go -- to basically walk from one corner of the building in and around the walkway down to the far corner without -- in case it's raining exposing yourself to the rain like tonight, so seven spaces. Now showing you what we are going doing as far as the fascade, these two fascades, this is the fascade you would see from Windsor Highway. Basically, again, it's hard to read because it's L shaped. You have the long L here and the short leg here, so this portion of the fascade is much closer to you. It's coming forward then if I were looking at the building from the side. I would see the side of the building here and then again that leg coming out into the parking lot.

MR. KANE: Let me interrupt you for one second. When we open it up to the public portion of the meeting we will put that up so everybody can see exactly what they are talking about on the plans, okay, just so you know.

MR. COPPPOLA: So basically the fascade is going to be -- as it's viewed from the front from Windsor Highway, going to be a mixture of brick all of the way down on the bottom here and we basically brought brick accents in terms of

soldier course and detailed in the gable, that is the gable closest to the highway. So there is basically a lot of brick, brick columns and then there is a wood column set on top of a brick pier that divides that. And like I said, a colonnade which extends all of the way around this L shape enclosing all of these retail units. I think that is about six feet deep. There will be a few areas for signage. A large area here again that breaks up kind of the long body of the roof. We brought that portion up a little bit so signage is here and can be right above the walkway here and that is all done in a stow or a stucco exterior finishing system. And the back we basically left very plain, kind of undone without a lot of detail and that has been done on purpose. I think, at least my feeling is, that we don't want to draw attention to the rear. This is going to face the residential area even though it's 200 feet deep so we are going to put a minimum amount of ornamentation on the rear, a minimum amount of lighting. And that will be used for occasional deliveries and service access in the rear of the lot, but again that is 200 feet away from the lot line. So that is basically what we are proposing to do. The elevations, the floor plan and site plan and I can answer any questions.

MR. KANE: Okay.

MR. BLOOM: Thank you. Mr. Chairperson, by way of background on the application, my client, Anthony Rizzi, first started business in the Town of New Windsor quite sometime ago. As you may know he ran Anthony's Deli up on the intersection of 32 and Union Avenue and he first bought this property about four years ago. It was the intention at the time to immediately set up and move his deli from where it was to this location because his lease was expiring. Unfortunately because of difficulties in the closing it was not

possible to get it done in time and his lease ran out so he had to relocate into Newburgh. His intention now, if this plan were to go forward, he would like to move back and into something of this type of complex. When he purchased the property it was a single family residence. It still is. It's a two story single family brick residence. It has been there many years and at the time he had a tenant on the property that was paying \$1,600 a month in rent and it's my understanding, our expert will indicate to the board, that that is the market rate, \$1,600 per month. It does not allow a reasonable return. I respectfully submit to my client under the circumstances given his investment and the maintenance and cost, etc., but those issues will be addressed in more detail by Mr. Carhart. Now, the question is is this an undo hardship to my client and I respectfully submit to the board that it is. He made a substantial investment. Even at the present time as he tries to rent it it's a very difficult piece of property to rent. It's only one of four residences within a quarter of a mile of Route 32. It's been basically commercial for many, many years. As we know across the street we have parry's Automotive. We have the carpet store next store. We have the Flags Guys and so on and so forth. So if the board were to be disposed to grant the application and I submit to the board that it would not change the character of the neighborhood. Matter of fact, it would be more in keeping with the character of the neighborhood if the construction were permitted to go forward. More importantly, I believe that from a logically and a planning prospective, I believe it would be an enhancement to the quality of the neighborhood that a structure of this quality be constructed in that area at this time. I submit, if it were, this indeed would -- the values of all of the surrounding commercial values would be increased by this structure. I also know, and my

client and Anthony Coppola, went to great lengths to try to design a building not only as aesthetically pleasing and functional, but also takes into consideration, I believe, the general ambience of the residential community behind it. It's not flashy. It's conservative. keeping with the style and the quality of hisotoric surroundings of the entire neighborhood. And as Anthony Coppola says, it's 200 feet setback from the actual residences in the rear. I personally toured the area. I note that all of the commercial structures leading up to it and beyond it all border, of course, on the same residential neighborhood and looking at those buildings and looking at this rendering this evening I can't help but submit to the board that I believe if construction, if it were allowed to go forward, it would not only be pleasing to the eye but increase the value of not just the commercial, but I think would lend something even to the residential. It's a unique situation my client is faced with because, as I say, he has a two family -- he has a two story residential in a commercial zone. All of the other structures around it are commercial. When he purchased it he didn't create the residence itself, that had been there for many years. And so I respectfully submit that he did not of his own volition or certainly of his own actions create the situation with which he is presently confronted. Having said that, with the boards' permission, I would like to introduce Mr. Eldred Carhart, a certified New York State appraiser and he will address the issues of a lack of reasonable return, which we must establish, of course, from a legal prospective. With the boards' permission Mr. Carhart will address the board.

MR. KANE: Thank you.

MR. CARHART: I wonder if I can give you all a copy of this proposed testimony. If you wouldn't

mind I would like to summarize the content. I don't need to repeat or preach to you, but the page that deals with the lack of reasonable return is Page 2. This property was purchased from Scott Rollo in 2004 for \$450,000. And if we were to use a 5 percent appreciation rate, which is very reasonable, today it would be worth \$509,800, roughly. The house has a fair market rent of \$1,600 a month, which equates to \$19,200 all together annually. I have applied a 5 percent vacancy and bad debt allowance, which is \$960 and it throws off an effective gross income of \$18,240 with expenses of \$10,400, which includes \$7,275 in taxes and maintenance and repairs, legal and accounting, professional property management, miscellaneous and a reserve for short lived items, the garbage collection and lawn care and so forth is paid for by the tenant. That leaves a net operating income of \$7,840. Now, the cash-on-cash rate of return is -- can be computed by dividing the net operating income by the value of the property, which equates to 1.54 percent. This is -- the nominal cash-on-cash return is 5-10 percent. Now, cash-on-cash really is an overall yield rate for the overall value of the property, that is just an appraisal term. The building, of course, is going to be 14,500 square feet, single story building. It would have a rent roll in the neighborhood of \$12.00 to \$16.00 per square foot rental value. And I think that is basically the whole -- the whole equation here. If anybody would like to ask any questions I would be more than happy to try to answer them.

MR. KANE: Mike, quick question, the zoning line that runs continually right through the Flag Guys, Orange County Pools, so every business in there is half in, half in residential basically.

MR. BABCOCK: Yes. I would not say everyone.

MR. KANE: Close?

MR. BABCOCK: Yes.

MR. LUNDSTROM: One further question Mr. Chairman for the building inspector. Mike, the neighboring properties, is the structure itself in the C zone or the R-4 zone?

MR. BABCOCK: The one on either side, the structure on Prokosch (phonetic) you can see says existing dwelling, but that has been remodeled to a hair salon, that is in C zone. And the one that says existing dwelling there, I assume, that is Cavalieri's Flag Guys where they sell the flags.

MR. LUNDSTROM: Yup.

MR. BABCOCK: What they did is remodeled the existing houses and created businesses out of the existing houses.

MR. KANE: Orange County Pools is the next one down.

MR. COPPOLA: That one probably is.

MR. KANE: I know it is. I ran it for six years.

MS. LOCEY: Your calculations indicate that with the single family home his rate of return is 1.54 percent and the average is 5-10 percent?

MR. CARHART: Yes.

MS. LOCEY: Okay. And on this site plan there are existing homes?

MR. COPPOLA: There is one existing home.

MS. LOCEY: In the back of the property?

MR. COPPOLA: No, I will show you. Over here on this parcel.

MS. LOCEY: Yes. But the back of this parcel is deep, 500 ft. parcel.

MR. COPPOLA: Correct. There is just the one building on the lot.

MR. BABCOCK: And behind it --

MR. COPPOLA: Those are --

MR. BABCOCK: -- those are homes.

MR. COPPOLA: I believe those are all single family homes.

MS. LOCEY: How are they accessed?

MR. COPPOLA: What is the street? I forget.

MR. BLOOM: Lannis.

MS. LOCEY: Lannis, L A N N I S. Where is that?

MR. BABCOCK: It's off of Willow. You go down Willow and it's the first right on Willow.

MR. COPPOLA: Here is the location now. That gives you -- there is Lannis off Willow, which is off Windsor Highway and then you can see the lots there, so the rest of the lots from this -- his tax map extend all of the way to the houses.

MR. BABCOCK: Yes.

MR. KANE: Now, if they wanted to Mike, they can - they are basically here because the building
itself is going in towards the residential part
of where the line hits. If they put the building
in the commercial section and the parking in the

rear they would not be here at all.

MR. BABCOCK: That's correct. The Planning Board - the Planning Board -- the Planning Board told them they wanted the parking in the front.

MR. KANE: I know. I just want to bring that up. That it's possible for them to build there and put all of the parking in the back technically.

MR. BABCOCK: That's correct.

MR. KANE: So there is an option there just so the homeowners know that. I think I would rather have the parking in the front than the rear and having all of that noise, but that is my own personal thing. I just wanted to point that out. It's an option to still build on this and put parking in the back. Okay. At this point I think what I am going to do is open it up to the public. Let's hear the publics questions. Please don't repeat yourselves. Just stand up and give your name, address and answer the questions. Name and address?

MS. CAVALLO: Sorry. It's Kara Cavallo, C-A-V-A-L-L-O. I am at 14 Lannis Avenue. I live in the house that, I think, on the map I saw it, it's Hughes. I have a question about what you just said about the parking. They would not require a variance to have the parking in the back?

MR. KANE: No.

MS. CAVALLO: So....

MR. KANE: It's their property. It's where the building is. If the building is okay they can do anything they want basically in the backyard.

MS. CAVALLO: My understanding about the purpose

of this hearing is to request a variance of the 200 ft. buffer zone where we --

MR. KANE: Basically what is happening is -- show her where the building hits, right where the zoning.

MR. COPPOLA: Here is our building, the L shape building. This is the 200 ft. zoning line so it cuts right through the building so a portion of the building is in the R-4 and a smaller portion of the building is in the C zone. Almost the entire parking lot is in the C zone.

MS. CAVALLO: And if you switched it then the parking lot would not be in the R-4 zone?

MR. KANE: They would not be here.

MR. KRIEGER: They would not be here.

MR. KANE: The parking would be in an R-4 zone and the building would be entirely in the commercial zone. If they proposed doing it that way then they would not need a variance.

MS. CAVALLO: So it's permissible to cut down the trees there and put in the parking lot?

MR. KANE: Sure.

MS. CAVALLO: Well, that being what it is I will say --

MR. KANE: If you notice in the back you can -- I think this is what everybody is concerned about, show them the wooded area and where the back of the building is and you are leaving those trees all back there. They are leaving a very good buffer for the neighbors in the back.

MS. CAVALLO: Right.

MR. COPPOLA: This 200 ft. portion here to the lot line, to the rear lot line of the houses would be basically mostly undisturbed. There would be a portion of this that would be a storm water retention area, like a pond, that collects this water. A portion of this that is wooded we are going to add new plantings so new white pines being proposed so those are coniferous trees that will be planted along the property line edge there and there will be a small paved area right behind the building.

MS. CAVALLO: All right. Well, I would object to the variance. I live right behind there at 14 Lannis Avenue and I do I disagree that it would not change the character of the neighborhood. I think it really drastically would. Lannis Avenue is a beautiful street in New Windsor. It's a -it's a beautiful quiet street. We have this buffer behind our house that I think my understanding is a 200 ft. buffer that currently has trees and other vegetation and we bought our house with the understanding and relying upon that buffer zone that it would provide a sort of buffer between us and the commercial properties that are on Route 32. I understand that that is commercial and I think that is fine. They should be able to do whatever they want within that zone. I don't think they should be able to encroach into that buffer. It provides privacy for us. We don't hear Route 32. We don't see it, especially during the summertime. I have two year old twin boys and, you know, we have pets on the street and there is lots of small kids on the street. People who have been there since, you know, the houses were built in the 70's. It's completely inappropriate to cut down into that buffer and put a pond there. It would make my home -- it would make it an inappropriate place for me to live and I feel very strongly about that. It provides safety and security and privacy for us. People are not walking from

Route 32 into my backyard with that buffer there. I fear that they would be without it. So I think that the buffer there -- is there for a reason. The law put it there for a status quo should be provided as far a the hardship I heard a little bit about that. I disagree that it's a hardship for this gentlemen who owns this house. It sounds like he is still making a profit at 1 percent, whatever it is. Margarita's and Flags Guys are homes that are turned into -- I go to Margarita's to get my haircut. I have -Margarita, she is great. This to me seems very different from that. MR. KANE: You do understand they can put the -still put the pond in here. They are not here for that. They are here for the building and parking to the rear of the building without anybody same except for the Planning Board.

MS. CAVALLO: My understanding is that they are applying for a variance of that residential zone.

MR. KANE: No. Just to put the building into the portion of the residential zone. If they want to put the building in the commercial end of it they can put all of the parking in the rear. That is what happened with Orange County Pools.

MS. CAVALLO: My objection --

MR. KANE: There is no objection to that. They can do it.

MS. CAVALLO: I am here --

MR. KANE: I just want you to understand.

MS. CAVALLO: That -- well, I disagree with that. I don't want that building there. Is that what I am here to say. I think that that is not appropriate use and it would change, would change

the -- it would change the character of the neighborhood. I don't think that it would -- I think it would be more of a hardship to us as residents to have that building there. It's a 14,000 square foot building. What is there right now is a house. Now, I understand that they can still do it, but I am just, you know, I object on that basis. I disagree that there is a hardship demonstrated there. I think it's a far more hardship for the houses behind it.

MR. KANE: Next. Ma'am?

MS. NEWLANDER: Diane Newlander, 4 Lannis Avenue. I will put aside my objections to the site plan although I have a few. I would like to say I am strongly opposed to granting the use variance to Petitioner Vito Rizzi in an R-4 Zone at 287 Windsor Highway. When I purchased my house on Lannis Avenue I researched the property behind me to know who owned it and what it was zoned for and that information was a determining factor in the purchase of my home and other neighbors I talked to say the same thing. We bought it because we knew we were protected from commercial buildings coming right up to the backs of our property. We do see the limits would adversely effect the homes on Lannis Avenue. The wooded nature between the residences and Route 32 strip after screening, removal of the trees and that pond looks very big to me. When you say you are not going to have to remove many trees I find that hard to believe looking at the size of that pond_ The removal of the trees would not only create an adverse visual impact, but reduce the noise buffering and would set a precedent that other commercial establishments along that strip would follow. Mr. Rizzi bought the property knowing full well what the zoning was and, you know, he has to deal with that now. And I don't (inaudible) can claim hardship. He has a whole commercial area that he can do something with.

The purpose of the Zoning Board of Appeals is to protect the quality of life of the residents. Since New Windsor has entered into a contract for professional planning services for preparation of a new master plan and since one of your members sits on the committee I recommend respecting that process or any other use variance until the new master plan is completed.

MR. KANE: Thank you. Next. Sir?

MR. STEIDLE: Thank you very much. My name is Bill Steidle, 575 Jackson Avenue. I have -- just so the record is clear I sit on the Master Plan Committee with Eric. I speak tonight however as a private resident and the opinions I express are my opinions only. Now, in preparation for the meeting tonight I did review the site plan that was submitted to the Planning Board. I reviewed the tax map to see how the property was situated in relation to residential properties. reviewed the zoning map and I also reviewed the zoning ordinance on both tables. You know, in that regard, I will mention that, you know, I am surprised that what you say as far as the -- a need for variance or lack of need for variance for parking lots in the R-4 Zone in the bulk tables I saw that nothing Al load permitted by right commercial parking lots. I cannot believe that you can have a Walmart situated in the commercial zone with all of the parking in a residential zone I mean and not require variance.

MR. KANE: All they have to do, speaking from experience, I ran Orange County Pools, is put the gravel in the back and force the cars through the back. That is what Orange County Pools has done.

MR. STEIDLE: Wait. I don't want to argue --

MR. KANE: Not arguing with you it's just --

MR. STEIDLE: The bulk table for the R-4 residential zone does not list by right commercial parking lots. Now, you know that commercial parking lots can be ten spaces, it can be 1,000 spaces in the case of a Walmart and I would beg to -- beg your indulgence and ask you to confer with your experts. Be that as it may, let me say that I am familiar with the site. I am familiar with Lannis Avenue. I have been to some of the residences on Lannis Avenue. I have been in the rear yards behind those houses and it's my belief that the project, as it is proposed, as Anthony outlined will certainly have major impacts on those residences. I mean, it's not -- as Diane indicated there certainly is tremendous amounts of clearing behind the building. You cannot build that pond without clearing the trees and it is presently wooded. And I think that will have substantial impacts, visual impact, noise impact and it will distract from the character of Lannis Avenue. Now, as far as hardship, the person who bought the property in 2004, the zoning in that area has not changed. It is exactly the same zoning, exactly the same boundary as it was in 2004, so to say there is now a hardship I find it difficult to accept. And I will mention one other thing, as far as the bulk tables contained in the zoning ordinance under the 6-9 shopping which this is in, there are many, many uses permitted in the 6-9 shopping, including things such as a delicatessen or whatever the owner wants to build and you can build that facility in -- within the commercial or 6-9 shopping portion of the property without infringing in the residential area. Now that is my belief. Now, you know from my prospective the residents of Lannis Avenue, you know, depends on the zoning to protect their investments, to protect their quality of life and to allow the total use of that entire property for commercial related uses is unfair to those residents. I think buffers -- Anthony, I have a

good deal of respect for the architect. I know he is a good architect, but that plan, as it's currently drawn, does absolutely nothing to protect the residents on Lannis Avenue, you know. They may put in two, four, six, eight, ten white pines, that is all they have done and they have taken out, you know, basically graded and removed all of the trees and put in ten white pine, that is not -- that is not going to protect the residents of Lannis Avenue one iota. I mean, you cannot prepare a plan that demonstrates a greater impact to the residents in my opinion. So in conclusion I would say, you know, as far as hardship, the person who bought the property in 2004, you know, the zoning has not changed. The, you know, \$450,000 is not a great deal of money for a three acre property partially within the 6-9 shopping district and I am sure that a return can be made with a site plan that respects the residential nature of the property to the rear. I think it's unfair. Secondly, I think it's unfair to burden the planning board with trying to develop a plan to later protect the residents. Putting ten white pines, you know, is not going to protect them and the planning board given that site plan is not going to be able to develop a plan that allows proper buffering for the residents of Lannis Avenue. I think buffers and I think Eric and I think the Master Plan Committee is going to try to deal with it. Buffers are essential between why the disparaging uses such as the 6-9 shopping and residential. You need buffers. You need screening. You need a separation to avoid the types of conflicts that we see all over New Windsor because of the lack of buffers and the lack of planning. So in conclusion I ask that you deny the variance, send the person back to prepare a plan that is consistent with the zoning and we go forth. Thank you.

MR. KANE: Thank you. Next.

MR. WESTFALL: My name is Fred Westfall. I live at 27 Lannis Avenue, which is on that map as Mark Hughes. I now own that residence. I have a question about this pond. If they change this building the other way and they put the parking lot in the back is this pond still going to be there.

MR. KANE: I have no idea.

MR. COPPOLA: I can answer that. I mean, the grades fall to the rear of the property so that is where water is going to go so I would probably say, yes, that is where the water needs --

MR. WESTFALL: The question about this pond is DEC and about having stagnant water in the rear of a residential area. As we all know, mosquitos are attracted to stagnant water and West Nile Virus is a big concern in this area. Who is going to monitor this pond to see if there is any kind of insect growth?

MR. KANE: All of that is, as far as I know, is planning board issues. That would be a discussion with the planning board, nothing that we would do here.

MR. WESTFALL: All right. Also, I have a question in reference to the parking if he changes it to the back. I was a police officer in New Windsor for 16 years before I retired and bought a house on Lannis. The reason I bought on Lannis was I was working on Lannis and Mark Street for years and because it is a quiet residential neighborhood with a large buffer zone behind the house. If it had been a commercial area there I probably would not have been interested. I think the parking lot, even though you say it's not under your control, the gentlemen over here, I have to agree with him, you say you ran Orange Pools for six years --

MR. KANE: Yes.

MR. WESTFALL: In my 16 years of working I don't ever remember a car being parked behind there. Your parking lot is out in front. The Flags Guys is on the side.

MR. KANE: Memorial Day weekend, have you ever been there when they parked on the streets? Not to argue, but that is where they put their cars. They have the combined driveway, which is now a veterinarian building next door. They steer them to the rear because there was no parking. Basically that is what they would do. It would be gravel. Again, its neither here nor there but....

MR. WESTFALL: Those are my concerns with this and I would like to see it turned down also.

MR. KANE: Thank you. Anybody else? Sir?

MR. McCARTHY: Phil McCarthey, 10 Lannis. I'm also concerned about the swamp, not a pond. It's a swamp. There is no water easement through my backyard, nothing and when it overflows where is that going, my backyard. There is small children on the block. You are putting -- it's a danger zone you are putting in my backyard. The grandkids I plan on, you know. It's going to be a fatality.

MR. KANE: Thank you. Anybody else?

MR. WILLIAMS: I am Kirk Williams, 394 Riley Road. As a recent and unsuccessful applicant before this board I know Section 267, Town Law, State of New York, has certain requirements that need to be met. For the publics edification, can you illustrate what they are and show how the applicant has met these requirements?

MR. KANE: Can you tell what the requirments are

We have not said he met anything yet.

MR. WILLIAMS: Can you state that for the record then?

MR. KRIEGER: Section 267, Town Law, State of New York, okay, the applicant must prove four factors for each and every case. One, the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence. Two, that the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood. Three, that the requested use variance, if granted, will not alter the essential character of the neighborhood and four that the alleged hardship has not been self created.

MS. WASHINGTON: I think you just answered your questions.

MR. KANE: Ma'am, what was your name?

MS. WASHINGTON: Mary Washington.

MR. LUNDSTROM: And your only comment was?

MS. WASHINGTON: 16 Lannis Avenue.

MR. LUNDSTROM: For the record, would you state what your comment was?

MS. WASHINGTON: I think he just read, you know, those last few statements, that is what our concern is. I'd much prefer to see deer traveling up and down the back lot than have cars there. Thank you.

MR. KANE: Thank you. Anybody else? Sir?

MR. EVANS: Vincent Evans, 5 Lannis Avenue. I just wonder, my concerns are the fact that there is wetlands back there. I don't know if that is within your pervue or not. It's been wet back there for many years. There is other environmental concerns. There is a family of hawks that live in the back of the property and God knows what other kind of reptiles and other things I don't care to know about it. I am sure that will be changed if you go and do something like that. And by looking at that drawing the pond looks bigger than the building and then that brings me to the building itself, you say 14,000 square feet, which you don't tell me what the dimensions are.

MR. COPPOLA: I can certainly tell him what the dimensions are if you want.

MR. KANE: Please.

MR. COPPOLA: All of the dimensions are on the site plan so along the rear it's 158 feet. The leg here across the front is -- you have 108 feet and 163 feet here.

MR. EVANS: My next question is about the run off either from the pond or -- from the pond or from the parking lot itself. For many years there has been building all along Route 32. They have done some drainage along the highway, but everything else has been left in tact except for the streambed that runs down through some of those properties and through the middle of mine. There is very little infrastructure change and yet we just keep building and building and water keeps running down through there and when there are huge rains in some places it overflows the storm drains on Willow Avenue and cannot handle it. They just pile through the top of the manholes and someone comes out and puts up cones and barriers until the rain stops, so I am wondering

about that part of it too. Like I said, I don't know if that comes under your jurisdiction or not but --

MR. EVANS: The other thing too is about the property variance you are claiming Mr. Rizzi has a hardship or would have a hardship --

MR. KANE: No offense, but the board is not claiming anything. The applicant is.

MR. EVANS: No, his representatives. I believe that when he purchased the property he purchased it with the idea that he would put his own deli there and the building or some kind of alteration to the building would serve for his needs. Since then he has moved on and now he would like to build this huge thing and return himself a big profit, which is his right, but I think it goes against the variance part of it. And like I said, I think he full knew what he was buying when he bought it. I don't believe he is a man of lacking any intelligence. That is all I have to say.

MR. KANE: Thank you. Anybody else? Sir?

MR. PROKOSH: Yes. Al Prokosh. I own the -- my wife and own the building next to this property. I just want to say I am not against this project. My concern is I feel the concerns of the residents behind there. My concern is if they come back to the board again and move that building up to the front and put the parking in the back the way the building is shaped is kind of going to close me in between the transmission shop and the new building. I mean --

MR. KANE: Again, we are only here -- if they decided to do something just in the commercial area they would be in front of the, you know, to the building department for a permit and then to

the planning board unless they needed some kind of variance they would not come back to this board. We are only here because the building itself is extending into the R-4 zone.

MR. PROKOSH: Okay.

MR. KANE: So the building doesn't cross that zone they don't come back to this board. It's all an issue of the planning board.

MR. PROKOSH: As far as where that retention pond is I want to put on the record we have been there since 2000 and that was basically a field right back to the property line, a little bit now there is not a residence for a homeowner so it's starting to grow up a little bit in the back, but before Anthony bought it that was basically a field all of the way to the property line. It was open.

MR. McCARTHY: No, it's not.

MR. KANE: Thank you. Anybody else?

MR. WILLIAMS: Kirk Williams again. From what I have heard tonight I don't think they met those four major points so I would urge the board to consider that.

MR. KANE: You have stated that. Thank you.

MR. KANE: Anyone else? Okay then we will close the public portion. Did you want to address --

MR. BLOOM: If I may, I would like to just make a couple of comments, if I may.

MR. KANE: Okay. We will officially close the public portion of the board.

MR. BLOOM: Just a couple of comments based upon

the comments of the residents of Lannis Avenue. Certainly their concerns are understandable, but they are not -- I respectfully submit unique in the sense that almost every application that comes before this board where you have a commercial construction next to a residential zone it's usually those concerns that are expressed and in this setting I would like to submit first of all that my client kept the building the way it was and continued to rent it as a residence. I mean, nothing can prevent him from clear cutting the entire lot, making it entirely baron, that was not his intention. He is not here to hurt anybody. If he -- the board acknowledged that if he wanted to build the building up in the front and put the parking in the rear he could. I don't think that is in the best interest to the people on Lannis Avenue.

Mr. Prokosh made a remark, I am glad he did, I am a local. In fact, I used to have an office when I first started practicing in Al Cavalieri's office and that was a field down there. It was never trees down there. It was a field. fact, some brush going up in the meantime, but their concerns are legitimate. I respectfully submit to the board if this application is granted, it goes back to the planning board and, yes, there is only eight or ten pine trees shown on the drawing now. My client would have no objection to stipulating or having this board put a limit indicating the amount of pine trees or the vegetation, all coniferous, Evergreens, year round. One lady testified especially in the summertime she has privacy with coniferous. It will be year round. They are concerned about the construction, of course, of the pond and legitimate concerns about mosquito population and what have you, that is all under the control of the planning board. There are, as we all know, chemical ways of dealing with that. I am not sure the planning board will make that a stipulation of any planning board approval. I

respectfully submit to the board we have demonstrated the hardship. We have demonstrated that what we want to do is in the best interest of the general community, not at all inconsistent with the commercial construction and it -- and I don't believe will invade or intrude. I believe it will enhance the privacy of the people on Lannis Avenue. Thank you.

MR. KANE: Any further questions from the board?

MR. LUNDSTROM: A few questions, Mr. Chairman, addressed to the building inspector. Mike, in part of the public hearing some of the public indicated that there were wetlands back there. Is that documented wetlands or Federal, State or --

MR. BABCOCK: Well, according to this map there is no wetlands. It may be an area that when we talk about wetlands, lands that are wet. We are not necessarily wetlands.

MR. LUNDSTROM: I am talking about Federally or state protected wetlands.

MR. BABCOCK: No. According to the plans and engineer, that kind, no Federal wetlands on this property.

MR. LUNDSTROM: Also in the public hearing it was stated by the public there is a streambed running through that property. Is that documented anyplace?

MR. BABCOCK: Well, there is a 30 inch crossing on Route 32, that is what they are talking about. It's a drainage easement or I don't even know if it's an easement. It doesn't show. It appears that the state that owns Route 32 put a culvert pipe there and discharged it onto this piece of property. They are going to pick that up, their

plan is to pick that up with their water and go into this detention pond and then release it.

MR. LUNDSTROM: Would that be considered a natural or manmade streambed then or would it be considered a streambed at all?

MR. BABCOCK: You know, it's a drainage. I don't know whether it's a stream. I am sure -- I am sure when it does not rain there is nothing there.

MR. LUNDSTROM: Okay.

MS. LOCEY: May I ask about the proposed retention pond. Will this always be filled with water or is it drawn unless we have periods of severe rain?

MR. COPPOLA: I am not an expert in this, but I believe the way these are set up now that they are not meant to be dry. There is always some water in the bottom of it. The other thing I can say about this is these are always calculated so that the preconstruction run off, what exists right now is all green, let's say you do have run off even though it's green like today, the water still makes it down. The preconstruction has to equal the post construction so that rate of flow right now when it's green before anything is developed is going to be exactly the same rate after all of these improvements are made so the water will go in the same place at the same rate it is right now.

MS. GANN: In relation to that I would like to also ask what would the footage be when it is at a maximum, if it's maximum filled? I don't know if I am asking it right. What the depth is?

MR. BABCOCK: It all has to be calculated.

MR. COPPOLA: I cannot answer that. I very rarely see them filled. They are designed for a 25 year storm. I think that is what the town would require, a once -- a once in 25 year rain event, that is how these things are sized so you might not see it filled for a decade.

MR. BABCOCK: Mr. Chairman, one thing about the pond, this is not something that the applicant wants to do. It is something that the applicant has to do. It's state law he does this. He has no choice. He has to put this pond in.

MR. KANE: Right.

MR. LUNDSTROM: One further thing on the question Kimberly asked. Are we saying the maximum depth of that drainage pond would be two feet, ten feet?

MR. COPPOLA: Two to four feet, somewhere in that range. We're not looking at something that is -- the fact that he has created something wide that means it's very shallow and this thing is probably going to get smaller. He probably oversized it right now. He hasn't done any storm water --

MS. LOCEY: Analysis.

MR. COPPOLA: Right. So that can very well get smaller and then he will figure out the depth. I don't think these things are like pools.

MS. LOCEY: Can you tell me also how many feet passed the commercial zone into the residential zone is the building proposed to go? That one side of the building is 163?

MR. BABCOCK: It's about 100 feet.

MS. LOCEY: Okay. From the end of the proposed

building to the back of the lot line how much feet is left?

MR. BABCOCK: End of the building to the lot line 200, basically 200 feet.

MS. LOCEY: So 200 feet from the back side of the proposed building.

MR. COPPOLA: Correct. To the lot line. To the rear lot line.

MS. LOCEY: Okay.

MR. KRIEGER: So from the change of zoning, 300 feet, 100 feet, which would be taken up by the proposal and 200 feet remain as buffer.

MR. COPPOLA: Yes, that leg is almost exactly 500 feet so that is exactly 200. 100 ft. of the building and another 200 ft. of the rear, rear lot.

MR. LUNDSTROM: One other question of the building inspector. Mike, if they were to relocate the building, move it up forward so the entire structure were within the commercial zone they could then put a parking lot in the back, how large could that parking lot be?

MR. BABCOCK: I don't know that answer.

MR. LUNDSTROM: Can they go within a certain number of feet with the property line or back or do they still have to put the retention pond?

MR. BABCOCK: The pond has to go in no matter what.

MR. KANE: Probably state law. He has to have that retention pond.

MR. BABCOCK: That parking lot and the parking lot has to comply with the zoning regulations. He needs one space for every 150 feet of retail space so that determines the number of parking spaces and based on that no matter where the parking spaces are on this property that pond still has to be built.

MS. LOCEY: So the retention pond will remain relatively in the same place it's shown now no matter where the building and the parking lot are?

MR. BABCOCK: That's correct. It makes --

MR. KANE: It's dictated by the flow of the water.

MR. BABCOCK: That's correct.

MS. LOCEY: What is the possibility of -- is it a viable idea to recommend that there be some variance in the number of parking spaces so that the building can come up to the road a little bit more.

Is that --

MR. COPPOLA: We would be open to that. I mean, I will throw that out there. I personally believe 150, that is a huge number of parking spaces.

MS. LOCEY: Yes.

MR. BABCOCK: Well, I can tell you that we have retail spaces throughout town. I have been to just about every one and the reason the zoning was updated to the 150 was because there was not enough.

MR. COPPOLA: Right. Okay.

MR. BABCOCK: New Windsor Mall, there is not enough places to park, but that can happen.

MS. LOCEY: I am throwing it out. I thought that may be a semi compromise.

MR. COPPOLA: Is office still calculated one per 200?

MR. BABCOCK: I don't know.

MS. LOCEY: These are hard questions.

MR. BABCOCK: Everything has changed so much.

MR. COPPOLA: Okay.

MR. LUNDSTROM: I think Kathleen Locey brings up a valid point. Right now, just to summarize, I think the dilemma we are in, that we are faced with is an application saying they want to put 100 feet -- encroach upon the residential area that is 300 ft. long, they want to bring the commercial back 100 feet leaving the remaining 200 feet still wooded and no matter what happens you have to put that retention pond in.

MR. COPPOLA: Yes.

MR. LUNDSTROM: That is one. The other application is -- is forcing the applicant to put the commercial structure in the commercial zone and put the parking lot in the back. I am wondering if there may be grounds for some type of compromise that Kathleen mentioned. Is 100 feet -- go back 50, put the primary parking in the front and maybe auxiliary parking in the back. I don't know if that is an option or not and if it were I don't know how to proceed.

MR. BABCOCK: One of the problems with putting any parking in the back you have to have access to the back of the stores.

MS. LOCEY: I don't think -- then you bring up the

issue of lighting. And what is going to be intrusive --

MR. KANE: Lighting.

MS. LOCEY: -- the lighting or the back of the building. The cars driving in and out with their lights and their noise and their fumes or just the back of the building. So in my view, if we are looking for some sort of variance with respect to parking it should be for a lesser number of places, not to change the configuration as to where --

MR. BABCOCK: But --

MS. LOCEY: If I may continue for one moment. Basically two concerns, one is safety because of the fears of that retention pond and small children who either live or it's anticipated some day soon or in the future will live in that area. And number two, is the concern of the residential area losing its character of being disturbed with noise, with traffic, with lights and concerns that they want to be reassured of what would be a sufficient buffer. And I think if we could address those issues everybody would be at least satisfied, maybe not 100 percent, but at least be with the application. If it were I, I wouldn't want the parking lot behind the building, but I would want a large enough buffer so that I don't see the everyday comings and goings of a business commercial property. On the other side, the front portion of this property is perfect. So what can we do here? What is the best solution?

MR. COPPOLA: Just another idea to throw out as far as the parking, one that would make sense for this, if you were to put parking in the rear is basically parking designated for employees.

MS. LOCEY: Staff.

MR. COPPOLA: Right. If you did that with the parking spaces you could take maybe ten or fifteen spaces and put them behind. You are probably only going to move the building up, my guess, would be 20 feet, but then you have parking and headlights to deal with in the back. There is a 20 feet -- is 20 feet really going to make a huge difference.

MS. LOCEY: To tell you the truth I would rather see more trees.

MR. COPPOLA: I would agree with you. It's not worth it. Screen the headlights and that activity, that noise, which they don't have now. We did think that through a little bit.

MR. LUNDSTROM: Mr. Chairman, one further question for counsel. Of the four points that are needed to grant a use variance one of them is it is a self created hardship and the other one substantially change the character of the neighborhood or community.

MR. KRIEGER: Yes.

MR. LUNDSTROM: Just an open discussion for Mr. Bloom and the architect. Do you folks feel that will has been properly addressed before this board, that --

MR. BLOOM: Mr. Lundstrom, I respectfully suggest that it has been, but obviously I defer to your counsel. He is the ultimate arbitrator on that issue. I submit from my prospective that my client bought the property and he bought it with an existing residence on it. It's not a situation where he bought vacant land, constructed the residence several years ago and now wants to turn it into commercial. That would

be a classic case of unclean hands as we say in the law, that is not what occurred. On the other hand, I will take it upon myself to preempt your counsel's decision on that issue because obviously he is there for that purpose.

MR. KRIEGER: The -- ultimately the determination that the zoning board has to make as to whether they except Mr. Bloom's argument or not, that is in essence what it is, it's an argument. His argument that he has met the statutory requirement has been, I think, set forth sufficiently. So the board can decide whether that is sufficient or not sufficient. Whether that argument prevails or does not.

MR. LUNDSTROM: One last question of the building inspector. Mike, is there anything that can be done with this property where that swail does not have to be done if they did not do any construction on the property? If they left the building as it was will that drainage pond have to be done also?

MR. BABCOCK: Well, I don't think that they were ever going to leave it as a house. If they change it to a commercial establishment like Mr. Prokosh did, whatever, depending on how much disturbance they do they may or may not have to.

MR. LUNDSTROM: Okay.

MR. BABCOCK: This pond, I don't know, do you know when -- that is fairly new where every commercial establishment has a pond.

MR. COPPOLA: Zero net run off, that is the concept. I cannot empty anymore water than the green rate right now. In other words, water is flowing there tonight. It flows down hill. After we develop this site it's going to be the same net run off that is --

MS. LOCEY: Not more, not less.

MR. COPPOLA: That is the whole concept in a nutshell. What we have to do is retain that water and then slowly meter it out. First it's collected and then it's run off.

MR. KANE: And depending on what commercial building and parking lot will determine --

MR. BABCOCK: Right now today there is no parking lot. There are a couple of spots for, I don't know, whatever, for a car. So anything they do there they will have to put parking in for a commercial establishment so, yes, this -- he will have to have it, but it's going to be probably a lot smaller than that.

MR. KANE: Yes.

MR. BABCOCK: This pond looks awfully big for this project where they have circled that area. I can't imagine the pond can be that size. We have major, major developments that don't have ponds that big. But again, I don't know how much water is there.

MR BLOOM: May I comment?

MR. KANE: Please.

MR. BLOOM: As the board realizes, the board has the capacity to either grant or deny. And if grant, to place conditions which the board deems reasonable under the circumstances to take into consideration the concerns of everyone here this evening. What strikes me as being one of the prime considerations, and rightfully so of the neighbors on Lannis Avenue, is a loss of privacy and buffer. And as I am looking at the plan I see eight to ten coniferous trees. I don't think it would be unreasonable for this board, if it

were to act favorably on the application, to place a condition of coniferous trees of whatever this board deems appropriate at whatever height. It seems to be any number of coniferous trees existing on that plan is a boom to the people on Lannis Avenue because this was always -- was a meadow and what is there now is really overgrowth and is deciduous. It does not provide a buffer in the wintertime. It seems to me that if we had -- even if we had a condition that a landscape plan be presented, subject to the approval of planning board, but a minimum number of coniferous trees in the rear of this building, a substantial number to give a buffer that would perhaps exceed what is there now and take into consideration that any homeowner or future homeowner even keeps it as a residence could clear cut. At least this way the neighbors on Lannis Avenue have in the record a right to -- a right to enforce their privacy through the planting of these -- planting and maintenance of these trees indefinitely.

MR. LUNDSTROM: Mr. Chairman one thought, if I may, to the architect. Mr. Coppola, right now the plan shows an oval shape to the storm water retention pond. What would be if that became oblong giving you more room to plant two, three rows of coniferous trees?

MR. COPPOLA: That is definitely doable. I mean, I think Mike is right. I think this is probably oversized on this plan until he does the calculation, but you would definitely have room. I mean, we could -- I would say we could probably -- he could probably do at least 30 feet there green. I am sure you can do that. 30 feet before the water or the storm water area and then do like a staggered planting in that 30 feet so....

MS. LOCEY: Even if you were to sketch it this way

maybe.

MR. COPPOLA: He has to work with the contour so I am not entirely sure there is a drainage course. You can see it on the plan.

MR. LUNDSTROM: Yup.

MR. COPPOLA: So he kind of has to conform to that.

MR. BABCOCK: That is some 30 feet off the property line right now.

MR. LUNDSTROM: Yes.

MR. COPPOLA: It's 30 feet right now. I am sure he can adjust that a little bit.

MR. BABCOCK: It's also 150 feet across.

MR. LUNDSTROM: Yes.

MR. BABCOCK: I think he is just showing the area of where that is going to take place.

MR. LUNDSTROM: I think the presentation of that is what is also concerning the general public.

MR. BABCOCK: That's correct.

MR. LUNDSTROM: It looks humongous. I don't know if we can sit down and put a stipulation in saying, you know, you have to have so much of a buffer area if the calculation says that does not give you enough room for that storm water retention.

MR. COPPOLA: I mean, then we would back here if I were to say 50 feet. I think he could do it within 50 feet. I cannot tell you for sure.

MR. LUNDSTROM: Again, keeping in mind the desires of the general public, would it be safe to say not only do planting along the back, but the sides?

MR. COPPOLA: Sure

MR. KANE: Is it possible to move the building 50 feet towards the road?

MR. COPPOLA: Well, it is if we put some parking in the rear. I can definitely move it 20 feet, but then I am going to -- I am going to --

MR. KANE: Could you do it where the parking would be in the rear where it would be employee?

MS. LOCEY: But it still needs that lighting.

MR. COPPOLA: Yes.

MR. KANE: Yes. To me the lighting --

MS. LOCEY: For 20 feet that would be invasive I without a doubt.

MR. COPPOLA: It's not like I am doubling a setback. It's only ten percent of that, you know. I would like to say give it a calculated guess, a 50 ft. green area back there, 50 foot strip here before that retention pond. I think that is doable. He would have to calculate it out, some preliminary calculations to ensure that.

MR. BABCOCK: Mr. Chairman, you can get a lot of trees in 30 feet.

MR. COPPOLA: That is true too.

MR. LUNDSTROM: Mr. Chairman, I am in a quander here of what to do and what can we do, what

should we do. I am almost wondering, if it makes sense, to adjourn this public hearing and to have the architect go back and re-draw that, taking into account the opinions of the public. Now, when he comes back, may I ask counsel, do we need to republish this with the new plans?

MR. KRIEGER: Probably not.

MR. KANE: No, because we are not dealing with the numbers.

MR. KRIEGER: You don't publish the plans. The only publication are the notes, numbers

MR. KANE: And the public portion of the hearing is closed. There is no need to redo it into the newspaper. Although I will break it a little bit and ask the people here from Lannis Avenue if we put this on hold to take a look at it. My fear is somebody will put a commercial building on here and those lights are going to be in your backyard and more of a nightmare and with the car lights and with the parking lights and that kind of stuff back there and somebody can do it and no you cannot answer. The public portion has been closed. We already mentioned that, but I will ask, do you - would you rather just see us vote on it as it is right now or come up with a reasonable plan with the property owner? Just so you know, a simple yes or no that you would like us to take a look at it or to vote on it right now. No opinions.

MR. LUNDSTROM: If I may?

MR. KANE: Yes or no? Not a ton of comments. I will take a yes or no.

MS. CAVALLO: I think it's a standalone project and should be voted on its merits.

MR. KANE: Sir?

MR. STEIDLE: As a revised plan I think the public should have an opportunity to review the revised plan.

MR. KANE: If we do put this on hold I will re-open the public portion of the meeting so we can take comments. We are not that hard core, you know. It's -- I want to try to find a reasonable thing. You are not going to be 100 percent happy with it, but I would rather find a compromise that is agreeable. Like Kathy said not everyone is going to be happy, but if we can come up with a reasonable plan and talk about it.

MR. STEIDLE: (Inaudible.)

MR. KANE: Again, that is planning board, not us. We have nothing to do with that.

MR. STEIDLE: You cannot make a decision without that type of information.

MS. LOCEY: Go to planning board.

MR. STEIDLE: How can you determine whether buffers are acceptable limits of clearing vegetation that is there, streams, wetlands, if you don't have that information to make the decision?

MR. KANE: The way it's set up that is a planning board thing. We decide if they can view it, planning board decides how they do it. I did not make that.

MR. STEIDLE: I am not trying to give you a hard time.

MR. KANE: Sir, I asked the gentleman behind you and put him off twice for making comments. I

would ask you to respect that. I ask -- and just a yes or no. And again, that was a good question, whether I would open it up to the public and I definitely would.

MR. WESTFALL: The idea of having him go back, look at some other options and come back, I just heard another gentlemen state even the possibility of a wall going back there. I know -- I believe it's behind the Coach Diner we have -- they have a semblance of a wall behind their residences or their establishment to protect Continental Drive residents so, yes, if they can look at some other ideals.

MR. KANE: Thank you. Sir?

MR. McCARTHY: Can a fence do?

MR. KANE: Wall, same thing. Same thing. Fence, wall, some kind of a barrier more than where the kids can walk through a tree.

MR. WESTFALL: I would agree it's a good idea to look at it or some other way to protect the neighborhood.

MR. KANE: Just trying to be reasonable.

MR. WESTFALL: And, you know, taking into account I think you said there would be deliveries and that kind of thing, just taking into account protecting the public.

MR. KANE: Any other comments on that? I will take it that the public is in agreement on the possibility of us to table this. We will re-open it to the public but --

MR. KRIEGER: Let me just say for the information of the members of the board, when you vote on this, to vote on a decision you are entitled by

law to attach what is -- what the law refers to as reasonable conditions. You are not entitled to substitute your judgment for that of the planning board. So you cannot get into -- for instance, you cannot get into the specifics of how many trees are going to be planted and the buffer zone and what kind of trees, how tall they are going to be and what the lighting fixtures are going to be. That is all matters that are, by law, the business of the planning board. You are entitled however to attach a condition like there will be a buffer zone as in the details of which will be approved by the planning board of not less than X number of feet between the property line and the development. So in other words, you are entitled in your conditions to paint a broad brush, but you are not entitled to paint a detailed picture.

MR. BABCOCK: Mr. Chairman, the applicant has said that they are willing to do a buffer of more trees.

MR. KANE: Right.

MR. KRIEGER: These minutes from this meeting go to the planning board.

MR. KANE: Right.

MR. KRIEGER: Just as if they went to the planning board first. If they were coming here again they - it's a continuum. If they are approved here they go in front of the planning board and that is where all of the details of what -- what lighting fixtures are to be used and what kinds of vegetation would be used for buffering and all of those details. That is the business of a planning board.

MR. BLOOM: Mr. Chairman.

MR. KANE: Sure.

MR. BLOOM: Having heard the comments of the board and your counsel the thought crosses my mind that obviously my client has to be concerned with crossing the barrier in this -- before this board with respect to whether my client should be addressing certain issues with respect to the planning board, so the thought crosses my mind that perhaps the board might consider a 50 ft. buffer this evening as a condition of any approval if the board votes in favor of an approval. And if my client cannot comply with that after addressing the issues he has to address to the planning board we must come back here again for another public hearing.

MS. LOCEY: I would like to, in your calculation, see a buffer zone somewhat greater than what is existing now. That building is going to have added noise, traffic and I wouldn't even know how to say much greater, but certainly equal or greater. I would rather see something greater and I think your idea of coniferous is probably something we should look at since it's year round.

MR. BLOOM: Right.

MS. LOCEY: And the neighbors really need to be concerned during the winter months of losing that buffer so that is what I am thinking of in a broad --

MR. BLOOM: Broad sense. With a minimum buffer if we do not need -- if we have to come back and include in there a fence. I mean....

MS. LOCEY: Yes, I would.

MR. COPPOLA: Absolutely.

MS. LOCEY: If there is 200 feet in the back of the proposed building and the property line, 50 of which is going to be coniferous trees that to me sounds reasonable.

MR. BLOOM: That to me sounds reasonable and I respectfully submit that that is a --

MS. LOCEY: That is 25 percent.

MR. BLOOM: -- reasonable request of my client along with a -- along with a fence.

MS. LOCEY: With a fence.

MR. LUNDSTROM: Two points, Mr. Chairman. I think the opinion of counsel is certainly valid and I think we need to continue to appreciate this in a broad rush. However, if Mr. Coppola comes back with detail plans showing a certain number of feet with trees there we can then approve that without getting into the detail. Second part I want to mention, excuse me if I am overstepping, one of the problems -- I agree with Bill Steidle, one of the frustrations we face constantly is this separation of what the planning board does and what we can do. We cannot step over that bounds. This is not the first time we have run into awkward situations because of that.

MR. KANE: We are just not allowed to. Very simple.

MR. BABCOCK: If the applicant is agreeing, Anthony, to do this 50 ft. buffer zone the planning board is probably going to ask for it anyway, so if the applicant is going to agree to it I don't think the board has to stipulate it.

MS. LOCEY: Right.

MR. BABCOCK: He has gone on record he will do it

with a fence 50 feet wide and if the planning board wants 60 feet wide they are going to tell him that.

MR. LUNDSTROM: I think part of the reason we are doing this adjournment is to have the architect come back with the plans that the public can see and give them a more better feel of comfort from that.

MS. LOCEY: With a little bit more detail as far as the real numbers for this pond because it's really only going to be a third or half that size. I think that would appeare the residents.

MR. KRIEGER: I would like to say as part of the plan a feet dimensions on the plan from the back property line to the borders of the pond so that we know.

MR. COPPOLA: Yes, that will be the buffer.

MR. KRIEGER: How big the buffer zone will be.

MS. LOCEY: Sounds good to me.

MR. KANE: Call for a motion to continue. Diane, is it a comment on delaying?

MS. NEWLANDER: It's a comment on delaying. agree with her. I think it's a standalone project that should be voted on. The question here -- I realize you want to give nice details, but the question here is are you extending commercial use into an R-4 zone. That is the bottom line.

MR. KANE: Exactly what they are asking for and we're trying to get enough information to make a decision. Everything is not black and white. They can come in and put a commercial building on there and some kind of parking in the back with all of those lights facing the houses in the back

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and there is not a thing --

MS. NEWLANDER: That thing sounds like a scare tactic.

MR. KANE: It's not a -- this is not a political forum.

MS. NEWLANDER: I live there. I am not doing this as a political forum. I live there.

MR. KANE: I know. That is why we are asking. I even opened it back up to ask the people in the neighborhood if they want to take a look at another decision or decide on it now. We don't have any hidden agenda. Personally, I could care less, okay, but I do care enough and I care enough about the buildings that they can put -- I have seen it happen in this town where they have put a building up legally and totally ruined what was going on with the neighborhood. I don't want to see that, so why not take the time to discuss it. That is all we are trying to do is give everybody an opportunity to come out with a lot of gray area and discuss the whole thing. That is my opinion. Again, I am -- comments from others in the public was they were for that. I have two that were not for that. So that is -that is what we are trying to do is just find a compromise. Okay. Again, if this is not something you want we can vote right now if you want to reconsider that. That is not a scare tactic. I have no idea how anybody else is going to vote so it cannot possibly be a scare tactic. I think we should take the time and discuss it so all sides can take a look at what the problem is and come up with a reasonable solution. Okay.

MS. LOCEY: Motion to continue this public hearing on the application of the Zoning Board of Appeals dated July 23rd, 2007.

MR. KANE: As the chairman I will second that motion.

ROLL CALL

oPN

MS. GANN AYE
MR. LUNDSTROM AYE
MS. LOCEY AYE
MR. KANE AYE

MR. KANE: Would you be ready by the 13th?

MR. COPPOLA: I am going to say or the second meeting in August. Second meeting in August, that way we can present the drawings before the meeting.

MR. KANE: That would be August 27th. No notice on this. The meeting will be August 27th.

MR. COPPOLA: Thank you.

MR. BLOOM: Thank you.

THOMAS RETCHO & TERRANCE RETCHO (07-07)

MR. KANE: Tonights next public hearing, Thomas Retcho and Terrance Retcho, request for a 2 ft. Building height for proposed 8 ft. fence, interpretation and/or use variance for the storage, parking and use of trailers (57-1-113.1) and interpretation and/or use variance for the storage, parking and use of trailers (57-1-113.2).

MR. LUNDSTROM: I need to recuse myself because of my position on the property lines.

MR. KANE: You are out Eric.

MS. LOCEY: The public portion of this was closed?

MR. KANE: That was closed at the final meeting.

MS. LOCEY: I am just asking for the record. Is the applicant here?

MR. KANE: Just did that. No, he is not. But in talking to counsel we are allowed to vote without him since the public portion -- there is no input hearing. This is strictly a vote. I read the minutes and I think we are qualified to vote on the subject. I will accept a motion. One of you two young ladies.

MS. LOCEY: I will offer a motion to oppose in the application to grant the application of Thomas and Terrence Retcho for the variances as detailed on the agenda of the Zoning Board of Appeals dated July 23rd, 2007.

MS. GANN: I will second the motion.

ROLL CALL

July 23, 2007

MS. GANN NO
MR. LUNDSTROM NO
MS. LOCEY NO
MR. KANE NO

MR. KANE: Motion defeated. Motion to adjourn.

MR. LUNDSTROM: So moved.

ROLL CALL

MS.	GANN	AYE
MR.	LUNDSTROM	AYE
MS.	LOCEY	AYE
MR.	KANE	AYE

Respectfully Submitted By:

Danielle M. Magliano Court Reporter